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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1396

MICHELIN TIRE CORPORATION,
Petitioner,

vs.

W. L. WAGES, Tax Commissioner, et al.,
Respondents.

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

QUESTION PRESENTED

Whether tires imported by Petitioner in bulk in sealed sea vans and over-the-road trailers, but which after arrival at its warehouse have been sorted and segregated as to size and style and stacked on wooden pallets with other tires in its warehouse so that the individual shipments are no longer separate and identifiable units, are nonetheless immune from local ad valorem taxes by reason of Article I, Section 10, Clause 2 of the Constitution of the United States?

STATEMENT OF THE CASE

In addition to recitals made by Petitioner, at the interlocutory hearing in the Superior Court of Gwinnett County, Georgia, the Petitioner placed in evidence an affidavit of Roland A. LaCroix, its Administrative Manager [A.62-66] and oral testimony of Robert E. Stone, Trans Operation Manager of its facility located at Norcross in Gwinnett County [A.28-57].

Mr. Stone was unable to define the relationship existing between the Petitioner and the manufacturer of the tires [A.40-43], and when pressed on cross-examination stated [A.41-42].

> "A. You are getting me involved in a technical aspect of our corporation, our company that I honestly can not give you any information on. I do not have the information, I do not know. I've never looked into this aspect of the corporation of the company. When you bring in the limited aspects of either, simply terminologies that is used in various companies. There is only one Michelin Tire, whatever. It is a privately owned company of its parent office in France, of which all other countries are directly connected, so if you mind."

This witness was no more specific as to who brings the tires into the United States [A.42].

> "Q. So it may be that this Michelin Tire Corp. is a subsidiary? Would this be the way you would normally [Tr. 26] describe it, of the parent company in France? A. I honestly can not answer that because I don't know the legal aspects. You are getting me involved in something I'm just not——"

Thereafter, Intermaritime Forwarding Corporation, of New York City, was identified as performing the necessary documentation [A.42].

The property on which the warehouse is located in Gwinnett County, Georgia, is owned by Michelin [A.50], but whether the Petitioner or some other corporation Mr. Stone was unable to relate [A.51]. Plans are underway for the manufacture of Michelin tires at Greenville, South Carolina [A.48], and a public warehouse located in Clayton County, Georgia, is also being utilized as a storage and distribution facility [A.52].

The sea vans and over the road trailers into which the tires are loaded at the factories are sealed [A.43], the seal is broken at the port of customs and resealed [A.44], and then opened on arrival at Petitioner's warehouse in Gwinnett County, Georgia [A.44]. When the vans are opened the tires are removed and loaded onto wooden pallets by size [A.46].

The tires are loosely stacked on a wooden pallet which is picked up and transported from the vans into the warehouse [A. 47]. The tires are stacked—four stacks of five tires each on each large pallet—and then a heavy cardboard comb is placed down through the center and another pallet of those tires placed on that one, three high [A.47]. The tires are segregated by size and style within the warehouse [A.46, 56] and tires received from France and Nova Scotia would be distinguishable only that one would say made in France and the other made in Canada [A.56]. The tires are separated basically by size and type of tire, but not in identifiable lots as far as where they are manufactured [A.57].

Describing the method of business with franchise dealers, Mr. Stone stated as the dealers' requirements are sent to the warehouse, orders are prepared for shipment and various methods of transportation called in and the tires transported to the dealers [A. 51]. However, a Lawrenceville, Georgia [local Gwinnett County] dealer desiring "X" number of tires of a certain size could obtain them by "common carrier or UPS or he could come in on a customer pick-up basis, and pick them up" [A. 51].

If the local dealer needed four tires he could send his truck to Petitioner's warehouse, and the tires would be pulled out of inventory and loaded on his truck [A. 51]. The purchase of a whole pallet of tires would not be required [A. 51].

Respondents placed in evidence the NOD tax returns for the years 1972 and 1973, and oral testimony of Robert L. Wilson, Administrator of the Tax Assessor's office [A. 58-60]. Mr. Wilson related observations made by him at Petitioner's warehouse, i.e., the tires have always been stacked on wooden pallets, several tires to each pile; that you know from visual observation they are Michelin tires, but could not say they came in on a certain day, in a certain truck or Sea pack, whatever [A. 60].

The Decision of the Supreme Court of Georgia

While the entire decision of the Supreme Court of Georgia is exhibited with the Petition of Certiorari [A-6 through A-19] the crux of the Court's holding is here reproduced for ready reference:

> "As we read *Brown v. Maryland*, supra, it establishes a 'two-hat' approach to importers for resale. Such importers are free to deal with their goods as imports after the goods are in this country; and, if they do so, the goods remain immune from state taxation. When, however, the importer deals with his goods as a seller, he becomes Chief Justice Marshall's 'itinerant peddler'; and the goods become subject to state taxation. The original package doctrine is not a mechanical, universally applicable test; it is, instead, a useful means in many cases of determining which hat the importer-seller is wearing, because frequently the act of breaking the original package is preliminary to converting the imports to salable units.

> In the case at bar the entire Michelin tire inventory was unpackaged, and all shipments in the inventory were commingled and stored by size and type to make the individual units immediately available for resale. We therefore hold that the tires, imported in bulk without packaging, which have been sorted, segregated by size and style, and commingled with other shipments have lost their status as 'imports' and are subject to taxation."
>
> • • • • • • • •
>
> "The great weight of authority makes a vast distinction between goods shipped in packaging, such as crates or cartons, and goods shipped in bulk. Packaged imports retain their status as imports, and are not subject to taxation. Bulk imports that have been mingled with other bulk imports, sorted, and arranged for sale do not retain their status as imports, and they are subject to taxation."

SUMMARY OF ARGUMENT

The right of the State of Georgia and its political subdivisions to levy non-discriminatory ad valorem taxes on real and personal property is a necessary incident of sovereignty established by its Constitution and statutory scheme of taxation.

The "original form or package" doctrine as announced in *Brown v. Maryland* (1827), 25 U.S. [12 Wheat.] 419, 6 L.Ed. 678, does not afford immunity to Petitioner's tires from non-discriminatory ad valorem taxation under the facts here appearing.

The *definition* of "original package" is the same under the Import-Export clause as under the Commerce clause. "Original package" may consist of the container in which goods are transported, without particular regard to the size of the container, or

may consist of "aggregation of goods" in the case of shipments in bulk. In either event the "original package" is that package delivered to the carrier at the initial point of shipment in the exact condition in which it was shipped.

"Original form," as relied on by Petitioner herein, does not constitute an independent basis for immunizing imported goods from taxation. This Honorable Court so held in *F. May & Company v. New Orleans* (1900), 178 U.S. 496, 20 S.Ct. 976, 44 L.Ed. 1165.

Whether the Sea Vans and over-the-road containers are considered the "original packages", or the "aggregation of goods" contained therein are so considered, the Supreme Court of Georgia correctly held the tires subject to local non-discriminatory ad valorem taxation because entry into such vans, removal of the tires therefrom, stacking same onto wooden pallets, after first sorting and segregating same by size and style, thus co-mingling same with other shipments, terminated the import process.

ARGUMENT

1

The Tax Assailed by Petitioner Is a Non-Discriminatory Ad Valorem Assessment Made Under the Constitution and Laws of the State of Georgia as an Attribute of Sovereignty.

By *Article VII, Section I, Pararaph I* [*Georgia Code Section* 2-5401] of the Georgia Constitution of 1945 it is provided [Addendum I]:

> "The right of taxation is a sovereign right—inalienable, indestructible—is the life of the State, and rightfully belongs to the people in all Republican governments . . ."[1]

Georgia Code Section 92-101 reads:

> "All real and personal property, whether owned by individuals or corporations, resident or nonresident, shall be liable to taxation, except as otherwise provided by law."

Georgia Code Section 92-105 states:

> "Lands or other property belonging to citizens of the United States, not residents of this State, shall not be taxed higher than the property of residents, but such nonresidents, whether their property in this State is real or personal, shall pay taxes on the same herein."

Petitioner makes no contention that Respondents are ignoring the admonition of the foregoing statute, or that the assessment made proposes a higher rate than that levied against the property of residents.

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[1] This principle is well established. *Curry v. McCanless*, 307 U.S. 357, 59 S.Ct. 900, 83 L.Ed. 1339, 123 ALR 162. See also *84 CJS, Taxation*, § 4, p. 41.

2

The "Original Form or Package" Doctrine Announced in Brown v. Maryland Does Not Extend to the Limits Sought by Petitioner.

In announcing the "original form or package" doctrine in *Brown v. Maryland* (1827), 25 U.S. [12 Wheat.] 419, 6 L.Ed. 678, Mr. Chief Justice Marshall carefully refrained from defining the limits to which same would extend or not extend as the case may be. At the risk of being repetitive, but for easy reference, we quote (P. 441):

> "The constitutional prohibition on the states to lay a duty on imports—a prohibition which a vast majority of them must feel an interest in preserving—may certainly come in conflict with their acknowledged power to tax persons and property within their territory. The power, and the restriction on it, though quite distinguishable when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the understanding, as colors perplex the vision in marking the distinction between them. *Yet the distinction exists, and must be marked as the cases arise. Till they do arise, it might be premature to state any rule as being universal in its application.*" [Emphasis supplied.]

It is obvious the learned Chief Justice with prophetic vision foresaw that with the passage of time activities of importers would become more complex, new means of transportation would evolve, and the simple handling of goods by importers would be supplanted by more sophisticated methods.[2]

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[2] *Cf. Cook v. Marshall County*, 196 U.S. 259, 25 S.Ct. 233, 49 L.Ed. 471 ". . . in the changed and changing conditions of commerce between the states, packages in which shipments may be made from one state to another may be smaller than those 'bales, hogsheads, barrels, or tierces', to which the term was originally applied by Chief Justice Marshall . . ." In short, the flying box car of today may be replaced by a guided missile tomorrow.

(a)

"Original package" is that package delivered by the importer to the carrier at the initial point of shipment.

In the early decision of *McGregor v. Cone* (1898), 104 Iowa 465, 73 N.W. 1041, 1043, the Supreme Court of Iowa, after detailed discussion defined "original package" thus:

> "The original package, then, is that package which is delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped. If sold, it must be in the form as shipped or received, for, if the package be broken after such delivery, it, by that act alone, becomes a part of the common mass of property within the state, and is subject to the laws of that state passed in virtue of its police power."[3]

Under this definition the "original package" is the particular package delivered to the carrier at the initial point of shipment whether enclosed in some way or merely an aggregation of goods.

The "aggregation of goods"[4] definition of "original package" is of early origin and has been accepted by the Courts and text writers alike. *Austin v. State* (1898), 101 Tenn. 563, 575, 48 S.W. 305, 308 [affirmed 179 U.S. 343, 21 S.Ct. 132, 45 L.Ed. 224], announced:

> "Speaking generally, we would say that an original package, as applied to interstate and international commerce, is a package, bundle or *aggregation of goods*, put

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[3] Cf. 15 *Am Jur 2d Commerce*, § 46, p. 685. *Annotation*: *What is an "original package" within interstate or international commerce.* 26 ALR 971.

[4] Sometimes equated with "commercial unit of importation". *Columbus Steel Supply Co. v. Kosydar* (1974), 38 Ohio St. 2d 258, 313 N.E. 2d 389, 393, infra.

up, in whatever form, covering, or receptacle, for transportation, and as a unit transported from one state or nation to another." [Emphasis supplied.][5]

3

"Original Form" as Urged by Petitioner, Is Not an Independent Basis for Immunity of Imported Goods From Non-Discriminatory Ad Valorem Taxation.

Almost seventy five years subsequent to the decision in *Brown v. Maryland* this Honorable Court rendered its decision in *F. May & Company v. New Orleans* (1900), 178 U.S. 496, 20 S.Ct. 976, 44 L.Ed. 1165. The Court there expressed views [but again without defining ultimate limits] which are contrary to the contentions here made by Petitioner and deny immunity from non-discriminatory local ad valorem taxes to the imported tires in its warehouse in Gwinnett County, Georgia. Again we quote (p. 502):

> "Two views of the general question are presented for our consideration.
>
> One is that the box, case, or bale in which the plaintiffs' goods were brought from Europe was not the original package; that each separate parcel or bundle placed in such box, case, or bale was itself an original packge; nd that within the meaning of the Constitution no one of such separate parcels or bundles lost its distinctive character as an import and became part of the mass of property in the state, liable to local taxation, until after that separate parcel or bundle had been sold by the importers. This is substantially the proposition pressed upon our attention by the plaintiffs.
>
> The other view is that the box, case, or bale in which the separate parcels or bundles were placed by the foreign seller, manufacturer, or packer was to be regarded as the original package, and that upon the opening of such box, bale, or case for the purpose of using or exposing to sale such separate parcels or bundles, each parcel or bundle lost its distinctive character as an import and became a part of the general mass of property in the state subject to local taxation. This is the proposition advanced on behalf of the defendant."

Having thereby placed the controversy between the parties in clear perspective the Court discussed the importer's contention thus [pp. 502-503]:

> "In other words, they argue that the importer may sell each separate package either from the box in which it was transported, after it is opened, or from the shelves or counters in his store, without being subjected to local taxation in respect of any package so brought into the country, provided such separate package be sold or offered for sale *in the form* in which it was when placed in the box, case, or bale by the European manufacturer or packer. This means that the power of the state to tax goods, the product of other countries, depends upon *the particular form* in which the European manufacturer or packer, of his own accord or by direction of the importer, has put them up in order to be sent to this country. The necessary result of this position is that every merchant selling only goods of foreign manufacture, in separate packages, although enjoying the protection of the local government acting under its police powers, may conduct his business, however large, without any liability what-

[5] The same definition of "original package" applies to international trade and interstate commerce. *Baldwin v. G.A.F. Seelig, Inc.* (1935), 294 U.S. 511, 526, 55 S.Ct. 497, 79 L.Ed. 1032; *Anglo-Chilean Nitrate Sales Corp. v. Alabama* (1933), 288 U.S. 218, 226, footnote 2; 53 S.Ct. 373, 77 L.Ed. 710.

ever to state or local taxation in respect of such goods, provided he takes care to have the articles imported separtely wrapped and placed *in that form* in a box, case, or bale for transportation to and sale in this country. In this view, if a jeweler desires to buy fifty Geneva watches for the purpose of selling them here without paying taxes upon them *as property*, [sic] he need only direct them to be placed in separate cases, however small, and then put them all together in one box. After paying the import duties on all the watches in the box, and receiving the box at his store, he may open the box, and the watches, each one being in its own separate case, may then be exposed for sale. According to the contention of the plaintiffs, each watch, in its own separate case, would be an original package, and could not be regarded as part of the mass of property of the state and subject to local taxation, so long as it remained *in that form* and unsold in the hands of the importer." [Emphasis supplied.]

Respondents readily concede the Court was not there dealing with unboxed or unwrapped articles of merchandise. Nonetheless, "each separate tire" could easily be substituted for "each separate package" in the foregoing quotation with no violence to the holding.[6] To insist that unwrapped or uncovered tires shipped in bulk are to be treated differently from the boxed watch utilized in the Court's illustration is attempting distinction without real difference. "Original form," as relied on by Petitioner herein, is not in the light of the fore-

[6] In *Hooven & Allison Co. v. Evatt* (1945), 324 U.S. 652, 663, 65 S.Ct. 870, 89 L.Ed. 1264, it was stated: "When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction, considered in the light of the constitutional purpose, and not on the formalities or on the technical procedures by which it is effected."

going holding to be lifted from its context and utilized as an independent basis for immunizing imported goods from local taxation.[7]

4

The Supreme Court of Georgia Correctly Held That the Opening of the Vans, Removal of the Tires Therefrom, Placing Same on Wooden Pallets After Sorting, Segregating and Stacking Same by Size and Style Terminated the Import Process.

As noted by Petitioner in its brief (p. 18), the Supreme Court of Georgia rejected the view that sea vans and over-the-road containers are "original packages". Nonetheless, the Court correctly held that the activities of Petitioner with reference to the tires after their arrival at its warehouse in Gwinnett County, Georgia, terminated the import process.

Whether the sea vans and over-the-road containers be considered the "original package", or the "aggregation of goods" comprising bulk shipments enclosed therein is so considered, leads invariably to the same result. The "flow of distribution" argued for by Petitioner is interrupted by entry into the vans or breaking of the aggregate, or both, and at such point the goods lose their characteristic as imports.

The view that sea vans and over-the-road containers utilized for shipments in bulk constitute "original packages" finds substantial support not only in decisions by this Honorable Court but also holdings of State courts of last resort. The size of such containers, upon which much stress is laid by Petitioner in its brief (p. 18), is not necessarily controlling. This lies within the

[7] The "original form" of some articles of commerce never changes. Being circumferential in form and shape, Petitioner's tires will retain this characteristic throughout their entire useful life.

discretion of the shipper and becomes material only if an intent to evade applicable laws exists.[8]

E. J. Stanton & Sons v. Los Angeles County (1947), 78 Cal. App. 2d 181, 177 P.2d 804, cer. den. 332 U.S. 766, 68 S.Ct. 75, 92 L.Ed. 352, contrary to assertions of Petitioner, is a well reasoned opinion dealing with "aggregation of goods" as an original package. The California court pointed out (p. 807):

> "Indeed such articles of commerce as steel beams, threshing machines, telegraph poles and many others might be cited as illustrative of classes of imports that are incapable of being wrapped in cellophane or encased in wooden or steel crates. Although they might arrive at the dock without cover, nevertheless a shipment of such articles constitutes the original form or package."

By the same token articles of commerce *capable* of being wrapped or encased [such as automobile and truck tires], but which at the option of the importer are shipped in bulk not so wrapped or so encased, are no less an "aggregation of goods".

The statement in *Stanton* (p. 808), so strongly assailed by Petitioner [Brief, p. 15], is obviously used by way of illustration:[9]

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[8] *Texas Company v. Brown* (1922), 258 U.S. 466, 42 S.Ct. 375, 66 L.Ed. 721; *Cook v. Marshall County* (1905), 196 U.S. 261, 25 S.Ct. 233, 43 L.Ed. 471; *State v. Armour & Company* (1914), 27 N.D. 177, 145 N.W. 1033, (affirmed 240 U.S. 510, 36 S.Ct. 440, 60 L.Ed. 771); *Mexican Petroleum Corporation v. City of South Portland*, 121 Me. 128, 115 A. 900, 26 ALR 965); *Sugarman v. State Board of Equalization* (1958), 51 Cal. 2d 361, 333 P2d 333.

[9] The "original form or package" test has itself upon occasion been characterized as "not an ultimate principle . . .[but] an illustration of a principle". Mr. Justice Cardozo, *Baldwin v. G.A.F. Seelig, Inc.* (1935), 294 U.S. 511, 527; 55 S.Ct. 497, 79 L.Ed. 1032, supra.

> "A cargo of planks, timbers or logs imported from foreign lands is surrounded by the *invisible gossamer*[10] woven of law, custom and convention which protects the merchandise from the local tax assessor only so long as it retains the unbroken wrapper in which it entered the port. But when such cargo sheds its invisible cover, even though in the warehouse of the importer, and is so sorted and classified as to facilitate its sale, and portions thereof are sold until the pile is depleted and the remnants thereof are commingled with new shipments of the same type of timbers, also to be offered for sale, then a reasonable construction of section 10 and the decisions which have interpreted its meaning compel the termination of immunity from local taxation of such broken lots and commingled remnants of imported lumber." [Emphasis supplied.]

Reverting again to *F. May & Co. v. New Orleans* (1900), 178 U.S. 496, 20 S.Ct. 976, 44 L.Ed. 1165, other language appearing therein clearly indicates the same result would have been reached had the individual items referred to been removed from an "aggregation of goods." We quote (p.508):

> "We have seen that the plaintiffs, in effect, contend that having paid the duties imposed by the United States they were entitled, without liability to taxation upon the goods as property, to open the boxes in which the separate parcels of goods were transported, and put such separate parcels in the hands of agents to be sold wherever, in the state or in the country, customers could be found. The

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[10] An expression employed with some frequency by Mr. Justice Frankfurter: "gossamer distinctions" *Helvering v. Hallock* (1940), 309 U.S. 106, 118, 60 S.Ct. 444, 84 L.Ed. 604; "gossamer threads" *Polish National Alliance of the United States v. National Labor Relations Board* (1944), 322 U.S. 643, 651; 64 S.Ct. 1196, 88 L.Ed. 1509; "gossamer lines" *Burton-Sutton Oil Company v. Commissioner of Internal Revenue* (1946), 328 U.S. 25, 38; 66 S.Ct. 861, 90 L.Ed. 1062, 1070.

> separate parcels—such is the effect of the argument—are not to be deemed incorporated into the mass of the property of the state while thus being carried around the country by the importer's agents—no separate parcel, so long as it remained *in the particular form* in which it was packed in a box or case with other parcels, ceasing to have the character of an import until after it was sold by such agents. This proposition cannot be sustained. We cannot doubt that the goods when placed in the hands of agents for sale, *in separate parcels*, have been so acted upon by the importer that they have ceased to be imports, and have become part of the mass of the property of the state, liable to local taxation."

Individual tires, drawn from an "aggregation of goods", and sold to franchised dealers clearly equates with "separate parcels", and the franchised dealers with "agents" for purposes of the foregoing quotation. The holdings in *Volkswagen Pacific, Inc. v. City of Los Angeles* (1972), 7 Cal. 3d 48, 101 Cal. Rptr. 869, 496 P.2d 1237, and *Columbus Steel Supply Co. v. Kosydar* (1974), 38 Ohio St.2d 258, 313 N.E.2d 389, accord with the foregoing.

From *Columbus Steel Supply Co.*, supra, it appears steel pipe was the item of import and (p.393)

> "Appellant acted upon the pipe in this way: As the pipe was unloaded, appellant severed bands around some of the pipe in the commercial unit; the unit was then distributed in a sorting process where like pipes were gathered together; the pipe was placed in segregated stacks, presumably with like pipe which had arrived in previous imported shipments; the pipe then became inventory stock exhibited for sale; and pipe was removed piecemeal from the stacks for sale to buyers."

The Ohio Court concluded that "each item of pipe which arrived in a shipment was an integral part of the aggregate which

composed the commercial unit, and that when an item of pipe was separated from the commercial unit, or was sorted or segregated from other items comprising the commercial unit, the original package was broken or 'opened.' "

The decisions of this Honorable Court stressed by Petitioner do not in any respect depart from the philosophy expressed in *F. May & Co. v. New Orleans*, supra. *Hooven & Allison Co. v. Evatt* (1945), 324 U. S. 652, 65 S.Ct. 870, 89 L.Ed. 1264, described the immunity afforded imported goods by the Import Clause of the Constitution thus:

> ". . . that immunity survives their arrival in this country and continues until they are [1] sold, [2] removed from the original package, or [3] put to the use for which they are imported. (cits.)" [Brackets supplied].

The goods being here considered were bales of hemp and other fibers—not an aggregation of goods shipped in bulk—and a "use" as opposed to a "sale" situation existed.[11]

The same is true of *Youngstown Sheet and Tube Company v. Bowers*, and *U.S. Plywood Corporation v. City of Algoma*, decided together (1959), 358 U.S. 534, 79 S.Ct. 383, 3 L.Ed. 2d 490, the materials there involved having been placed in the inventory of raw materials for use in the manufacturing business of the importers.

That *Department of Revenue v. James B. Beam Distilling Co.* (1963), 377 U.S. 341, 84 S.Ct. 1247, 12 L.Ed. 2d 362, does not support Petitioner's position here appears from the opinion of the Court

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[11] *Hooven* was reviewed in extenso by Prof. Thomas Reed Powell: *State Taxation of Imports—When Does an Import Cease to Be an Import?* 58 Harvard Law Review 858. Of *Brown v. Maryland*, supra, Prof. Powell significantly states (p. 863): "Certainly Marshall's general expressions warrant confidence that his view was that the immunity lasted until sale *or* use *or* breaking bulk."

"It is not disputed that . . . 'the tax was collected while the whisky remained in unbroken packages . . .' "

Bulk shipment was obviously in no sense involved.

The *Youngstown Sheet and Tube* and *U.S. Plywood Cases* were reviewed in 73 *Harvard Law Review* 176. Once again we beg leave to quote therefrom (p. 178):

> "The decision seems to move the curtain of constitutional protection back one step in the case of the manufacturer-importer, although it does not question directly the line drawn in the case of the seller-importer. On the other hand, in view of the illogic of a dichotomy between manufacturer and seller, it is possible that the present decision portends a change in the import-for-sale area. As an original question today, it is arguable that there should be no bar to the application of a general property tax to any imported goods that are no longer in transit. The prohibition of the import-export clause seems to be directed at discriminatory taxes favoring domestic products, and at taxes which the imports first pass at the expense of the interior states of final destination and use. A general property tax, being nondiscriminatory, would not tend to exclude foreign goods. Furthermore, in view of the development of air freight and the expansion of inland waterways, the distinction between importing and shipping interstate is no longer as clear. In addition, the states in which the imports are stored, whether the goods are destined for resale or for use in manufacturing, do provide protection for the goods, and this protection is one of the conventional theoretical bases for sustaining property taxation."

Stronger argument in behalf of Respondents here could hardly be made.

Florida Greenheart Corporation v. Gautier (1965), 172 So. 2d 589, cer. den. 382 U.S. 825, 15 L.Ed.2d 70, is a slender

reed upon which to urge reversal of the Supreme Court of Georgia in instant case. The decision was by a divided court the cleavage in thought resulting from differing views of the facts presented. The majority equated the facts with an earlier decision by the Florida Court involving canned meats imported from Europe and stored in the original unbroken cases: *Overstreet v. Frederick B. Cooper Co.* (1961), 134 So.2d 225.[12] The dissenting judges viewed the situation in different perspective and the dissent is the better reasoned view.

Had the decision in *Standard-Triumph Motor Company, Inc. v. City of Houston* (S.D.Tex. 1963), 220 F. Supp. 732, not been vacated on jurisdictional grounds [5 Cir., 347 F.2d 194, cer. den. 382 U.S. 974], it would have been difficult to sustain on review since the statement of facts indicates that after arrival at the port of entry battery cables were attached, gasoline placed in the tanks, and water poured in the radiators of the vehicles. In short, whereas the vehicles could neither be cranked nor operated before the servicing they could be cranked and operated thereafter. The vehicles, therefore, were no longer in their "original form".

Citreon Cars Corporation v. City of New York (1972), 30 N.Y.2d 300, 283 N.E.2d 758, bears factual resemblance to *Standard-Triumph Motor Company* and cites same in support of the result reached. Imported vehicles were involved, with batteries, wipers and rear view mirrors installed at the port of entry upon unloading, together with sealed beam lights of American manufacture. However, a portion of the goods was determined subject to taxation and the following statement by the New York court is most significant (p. 761):

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[12] The *Overstreet Case* obviously involved facts parallel to the bottles of champagne in unbroken cases appearing in *Low v. Austin* (1871), 80 U.S. (13 Wall.) 29, 20 L.Ed. 517, and therefore of easy solution. Analogy to bulk shipment of lumber without packaging would be faulty as the dissenting judges emphasized.

"As with the original package doctrine a line must be drawn, sometimes arbitrarily, beyond which the immunity will not extend. (cit.)"

CONCLUSION

The importance of this case to the citizens of Gwinnett County, Georgia, is self-evident. Other importers are already located therein [A.25], and if shipments of goods in bulk designed for what is essentially a wholesale rather than an import operation are to be exempted from ad valorem taxation such wholesalers will have a tremendous advantage over their resident competitors. At the same time such wholesalers will be receiving protection for such goods at the expense of the other taxpayers of the County. To this end affirmance of the decision of the Supreme Court of Georgia is respectfully urged.

Respectfully submitted

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ADDENDUM

ADDENDUM I

Constitution of Georgia of 1945

Article VII, Section I, Paragraph I

2-5401 (6462, 6557) Paragraph I. Taxation, a sovereign right; tax on corporations

The right of taxation is a sovereign right—inalienable, indestructible—is the life of the State, and rightfully belongs to the people in all Republican governments, and neither the General Assembly, nor any, nor all other departments of the Government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts, and all other acts, whatsoever, by said government, or any department thereof, to affect any of these purposes, shall be, and are hereby, declared to be null and void, for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant or contract, whatsoever, by the General Assembly.

The power to tax corporations and corporate property, shall not be surrendered or suspended by any contract, or grant to which the State shall be a party.

The General Assembly is hereby authorized to provide by law for the granting of funds to a county in which is located land belonging to the State consisting of at least 20,000 acres from which such county receives no taxes. The General Assembly is authorized to provide in such law the procedure for determining the amount of funds and all other matters relative to any such grant.